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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANDRA McMILLION, JESSICA ADEKOYA,
AND IGNACIO PEREZ, on Behalf of
Themselves and all Others Similarly Situated,

Plaintiffs,

v.

RASH CURTIS & ASSOCIATES,

Defendant.

Case No.: 4:16-cv-03396-YGR JSC

**[PROPOSED] ORDER GRANTING
DEFENDANT RASH CURTIS &
ASSOCIATES' MOTION TO AMEND THE
COURT'S JUNE 18, 2018 ORDER DENYING
MOTION FOR RECONSIDERATION [FRCP
59(e)]**

Date: August 21, 2018

Time: 2:00 p.m.

Courtroom: 1

Judge: Hon. Yvonne Gonzalez Rogers

Defendant RASH CURTIS & ASSOCIATES' Motion to Amend the Court's June 18, 2018 Order Denying Motion for Reconsideration came on for regular hearing at 2:00 p.m. on August 21, 2018 in Courtroom 1 of the United States District Court in and for the Northern District of California. Plaintiffs SANDRA McMILLION, JESSICA ADEKOYA, and IGNACIO PEREZ were represented by L. Timothy Fisher and Jeremy Krivoshey of the law firm of Burson & Fisher, P.A. Defendant was represented by Mark E. Ellis, Anthony P. J. Valenti, and Lawrence K. Iglesias of the Ellis Law Group, LLP.

The Court finds that the circuits are in dispute on questions of controlling law which were raised in Rash Curtis & Associates' motion for reconsideration, and that the Ninth Circuit has not spoken on these issues. Specifically, the Court finds that each of the following issues raised in Rash Curtis & Associates' motion for reconsideration involve questions of controlling law which a substantial ground for difference of opinion exists:

(1) whether *ACA Int'l v. FCC*, 855 F.3d 687 (D.C. Cir. 2018) caused a substantial change in controlling law;

(2) whether, after *ACA Int'l*, Rash Curtis & Associates' dialers constitute an "ATDS";
and

(3) whether Rash Curtis may be held liable under the TCPA for dialing a reassigned cell phone number, where Rash Curtis had a good-faith belief that the information provided by its creditor-client established “prior express consent” to dial that phone number.

The Court further finds that an immediate appeal from the Order may materially advance the ultimate determination of the litigation by potentially narrowing the scope of issues to be tried, and potentially bringing clarity as to the extent of potential class liability, if any.

Based on the foregoing, Defendant’s Motion to Amend the Court’s June 18, 2018 Order Denying Motion for Reconsideration [FRCP 59(e)] is GRANTED in favor of Defendant, and the Court will issue an Amended Order which will include the language required to bring an underlocutory 28 U.S.C. § 1292(b), specifically, that the Order “involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.”

IT IS SO ORDERED.

Dated:

Honorable Yvonne Gonzalez Rogers
United States District Court Judge